IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.821 OF 2004

Shri Dunichand B. Sharma ... Appellant

V/s.

Municipal Corporation of
Brihanmumbai & Anr. ... Respondents

Mr.Dinkar Rao for Appellant
Mr.K.K. Singhvi a/w J. Xavier for Respondent No.1
Mr.Mukesh Chedda for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 12, 2004**

P.C.:

. The impugned order dismisses the Notice of Motion filed by the appellant. The suit is filed against a notice issued under section 351 of the Bombay Municipal Corporation Act. It appears that a notice under section 354A of the Act was issued by the Respondent-Corporation earlier against the plaintiff for having unauthorisedly erected certain walls. That notice was challenged by the appellant by filing suit No.651 of 2004. The trial Court in that suit observed that since the work was complete the notice under section 354A was infructuous and, therefore, permission was granted to the Respondent-Corporation to take action under section 351 of the Act. Accordingly, the

Corporation has issued a notice under section 351 to the appellant for extending shop Nos.10 and 11 at the rear by unauthorisedly encroaching upon a portion of Shop No.8. It appears that the plaintiff has not produced any evidence on record either before the Deputy Municipal Commissioner or before the trial Court to establish that the construction was authorised.

2. There is a sanctioned plan of the MHADA which repaired the entire building in 1998. Prima facie, it appears from this plan that the plaintiff has encroached on the area of another shop and has extended the dimensions of his shop. There is an affidavit on record of the landlady of the building indicating that the plaintiff has indeed extended the suit shop unauthorisedly. I see no reason to interfere with the order of the trial Court. Hence, Appeal from Order dismissed.

3. Mr.Dinkar Rao, appearing for the plaintiff, seeks stay of this order. Stay refused.